

Minutes of the Kansas Sentencing Commission Meeting May 25, 2005

The Honorable Ernest L. Johnson, Chairman, called the Kansas Sentencing Commission meeting to order on May 25, 2005, at 1:40 p.m. The meeting was held in the Senate Room of the Jayhawk Tower Building, Topeka, Kansas.

Attendance

Members: Honorable Ernest L. Johnson, Chairman; Paul Morrison, District Attorney, Vice Chairman; Honorable Eric Rosen; Honorable Christel Marquardt; Senator Greta Goodwin; Representative Janice Pauls; Representative Kevin Yoder; Roger Werholtz, Secretary of Corrections; Robert Sanders, designee, Kansas Parole Board; Annie Grevas, Director of Community Corrections, 28th Judicial District; Chris Mechler, Office of Judicial Administration; Kevin Graham, designee, Office of Attorney General; Dr. Donald Jackson, Public Member; Jaime Richardson, Public Member. Staff: Patricia Biggs, Executive Director; Julia Butler, Staff Attorney; Kunlun Chang, Research Director; Fengfang Lu, Research Analyst; Lora Moison, Research Analyst; Heidi Zimmerman, Research Analyst; Brenda Harmon, Administrative Assistant; Janice Brasher, Grant Administrator; Marty Schmiedeler, Accountant. Guests: Honorable Richard Ballinger, Chief Administrative Judge, 18th Judicial District; Mark Unruh; Billy Rork, Attorney at Law; Peter Ninemire, Families Against Mandatory Minimums; Gordon Lansford, Director, Kansas Criminal Justice Information Systems; Robert Waller, Legislative Research; Jennifer Dalton, KSC temp/Key Staffing.

Approval of the Minutes

The Chairman referred to the minutes of the March 11, 2005, Kansas Sentencing Commission meeting. A motion was made to approve the minutes by the Honorable Christel Marquardt and seconded by Greta Goodwin. The motion carried.

Welcome New Member

Chairman Johnson introduced Representative Kevin Yoder as a new member of the Sentencing Commission. He is from the House of Representatives. The Speaker of the House made the appointment.

Semi-Automated Journal Entry of Sentencing

The Chairman introduced the Honorable Richard Ballinger, Chief Judge of the 18th Judicial District, which includes Wichita. Judge Ballinger is Chairman of an ad hoc committee that was specifically created regarding the automation of Journal Entries and other related court documents. Four judicial districts (Wyandotte, Shawnee, Sedgwick and Johnson) are currently working on incorporating electronic Journal Entries into their full court systems, with plans for the electronic program to eventually be used state wide.

Judge Ballinger explained the current electronic Journal Entry process for Sedgwick County. At the time sentencing occurs, the Journal Entry is prepared electronically (with drop down boxes) in the court room. Defense council, prosecutor and judge sign it at that time. A system is being developed which will enable the Journal Entry to then be sent electronically to the court clerk's office, sheriff, county jail, and a copy is printed off for the parties involved. This removes the 1-2 month waiting period in the county jail, and eliminates a lot of processing paperwork. It will not create any more of a burden on the Department of Corrections, since they will just be notified sooner of offenders sentenced to DOC. Electronically sent Journal Entries will also eventually be sent to the Kansas Sentencing Commission. The 18th Judicial District's automation is the first step to this ultimate goal.

Judge Ballenger requested the Sentencing Commission approve the transition of the Journal Entry form currently being used by the 18th Judicial District. Changes may be needed as the electronic data implementation progresses. Following a discussion, the Honorable Eric Rosen made a motion to continue the cooperative work through the ad hoc committee to refine the form such that it is acceptable to both entities (courts and KSC) and that it conforms for the most part to the form that has already been approved in paper format for the Sentencing Journal Entry by the Commission, as is a statutory requirement. Representative Janice Pauls seconded the motion. The motion carried.

Statute Subcommittee work: Full Court/Prosecutor's system/fully automated JE's

Ms. Patricia Biggs reminded Commission members of a statute subcommittee made up of representatives from the different criminal justice agencies. They are looking at how the statutes are defined in full court. There are a couple of refinements that need to be made. This statute file will feed into the ultimate "fully automated" Journal Entry. The committee was in hiatus since 2002, but has been reactivated. Ms. Julia Butler has been working with KBI and DOC staffs, and other involved parties to make sure accurate statutes and definitions are being used.

Families Against Mandatory Minimums

Mr. Peter Ninemire addressed the Commission representing Families Against Mandatory Minimums. Items discussed included offenders sentenced for drug related offenses receiving drug treatment, and public safety. Handouts were provided.

Fiscal Year 2004 Annual Report

Ms. Biggs presented the Kansas Sentencing Commission FY 2004 Annual Report for approval. A motion was made by the Honorable Christel Marquardt and seconded by Kevin Graham to approve the Report and make it available for full distribution. The motion carried.

Legislative Update: Bills Passed

Ms. Julia Butler provided an overview on the Final 2005 Legislative Changes to the Kansas Sentencing Guidelines Act and Related Criminal Law. She provided a handout to Commission members.

2003-Senate Bill 123 Operations Update

Decision pending: 5th Judicial District operationalization as “drug court”

A decision was left pending at the last Commission meeting on the 5th Judicial District operationalizing their Senate Bill 123 cases in the drug court manner. The item at issue was that while they were integrating the cognitive behavioral components in their treatment, they also wanted to continue running a separate group through which each of the offenders received only cognitive behavioral interventions beyond what they were receiving inside the substance abuse treatment. Since the last Commission meeting, Ms. Biggs has identified one other piece of information that is relevant: the 5th Judicial District is not accepting offenders from other Judicial Districts. They have stated that since they are running their own drug court model, they are not accepting offenders from any other part of the state. Commission members discussed the following proposal: if they want to continue running this separate tract for cognitive behavioral beyond the substance abuse, perhaps their best method would be to seek a supplemental drug court grant, of which there are plenty.

A motion was made by the Honorable Christel Marquardt and seconded by Chris Mechler that we not allow the 5th Judicial District to continue to bill for a separate Thinking for a Change curriculum under SB 123. Following a discussion, the motion carried.

Data sent to the Consortium – Utilization Review

A presentation was made by the Mental Health Consortium at the last Commission meeting about doing a mini Utilization Review. Data has been sent to them to cover a three month time period from Jan. – March, 2005. They are going to do an over-arching review. They are capped off at about \$5,000 for this one time review. An agency by agency review will be done, with an itemization showing how the \$100 per hour fee was used and how much is left. They will then review the medical records for one case that seems high and one case that seems about average. They will do a time estimate on both of those, then a combination of both reasonable and high expenditure cases that they will review to meet the \$5,000 cap will be established.

Recent Community Corrections Directors Meeting

A Community Corrections Directors meeting was held May 19th in Wichita. Ms. Biggs provided an overview of items discussed. The main issues of concern were billing related.

Next Implementation Group Meeting

Ms. Annie Grevas announced the next Implementation Group meeting is scheduled for June 2nd. Ms. Biggs stated the minutes of this meeting will be emailed to Commission members.

State v. De la Cerda ruling – sentencing under SB 123

Chairman Johnson and Ms. Biggs discussed the recent De la Cerda ruling. The offender was not entitled to sentencing under SB 123, even though he was sentenced on or after November 1, 2003, but because his conviction was classified as a severity level 2 drug felony. A handout was provided.

Pending 1st Evaluation (18 month post-implementation = May 1, 2005): VERA Draft Proposal

Ms. Biggs discussed the first evaluation on SB 123, which is due 18 months post-implementation. Due to the low number of offenders that have had the “up to 18 months” to spend in SB 123 treatment under their sentence, outcome measures will not be available at this evaluation. Instead, the evaluation will look predominately at the implementation itself and the process measures, along with revocations to date.

VERA has submitted a proposal to do this evaluation. They can fund it predominantly with other grant foundation funds they have, with the Sentencing Commission’s share being \$5,000-\$6,000, which would be SAC grant funds written for SB 123 evaluation. A motion was made by the Honorable Eric Rosen and seconded by Annie Grevas to approve contracting with VERA for the evaluation. The motion carried.

NASC (National Association of Sentencing Commissions) Conference

Commission members interested in attending the annual NASC Conference being held August 7-9, 2005, in Washington, DC, need to have registration and flight information to Brenda Harmon by June 14th, due to deadline requirements with FY2005 funds.

Senate Bill 45 CJ “3-R” Committee Update

Kevin Graham, Vice Chair of the Kansas Criminal Recodification, Rehabilitation and Restoration Project Committee, along with Roger Werholtz, and Judges Marquardt and Johnson, provided an update on recent progress. The committee is currently meeting two days each month.

2005 Sentencing Guidelines Manuals Update

Distribution of Manuals

Letters have been mailed to allow pre-ordering the 2005 Kansas Sentencing Desk Reference Manual. Two copies are being provided free of charge to each entity, with additional copies available either by reproducing their own copy, downloading free off the Sentencing Commission web site, or pre-ordering at a cost of \$10 for hard copy and \$5 for computer diskette. 2,300 copies will be printed again this year. Commission

members decided to use the state printer at Hutchinson, which was the same used last year, since it's the cheapest cost of all estimates received.

Following a discussion, it was decided the pre-order solicitation may include up to the volume each Court Services Office received last year free of charge, with any additional copies requested subject to the above mentioned fees. A motion was made by Paul Morrison and seconded by the Honorable Christel Marquardt to leave the distribution of the 2005 Kansas Sentencing Desk Reference Manuals to the discretion of Patricia Biggs, with Chairman Johnson's guidance. The motion carried.

2005 Kansas Sentencing Guidelines Journal Entry of Judgment Form

Ms. Biggs discussed changes made on the 2005 Journal Entry Form. The proposed changes include selection boxes for several items, rather than circling or writing out information. An explanation on the mandatory drug treatment under SB 123 was added. Under Sentence Imposed, the 3rd & 4th or subsequent DUI convictions have been separated. The Special Rules have been numbered in an effort to help coordinate with the semi-automated Journal Entry in the 18th Judicial District. A legislative change required adding one new Special Rule for the Mortgage Business Act. In Section VI, the Recap of Sentence: A more detailed explanation is given for total months of confinement. Under Good Time Credit, an explanation was added under KSA 22-3725 to show it is pre 1993. The supplemental pages show a repeat of these same changes where applicable.

A motion was made by the Honorable Eric Rosen and seconded by Kevin Graham to approve the 2005 Journal Entry of Judgment Form as the official Commission form. The motion carried.

2005 Kansas Sentencing Guidelines Journal Entry of Probation Revocation Hearing Form

The 2005 Journal Entry of Probation Revocation form has three changes. Under Reason for Revocation Hearing a check box was added for SB 123 Intentional Noncompliance. Under the Probation Term and under the Disposition sections, Mandatory Drug Treatment had the KSA 21-4729 statutory citation added. A motion was made by Chris Mechler and seconded by Kevin Graham to approve the 2005 Kansas Sentencing Guidelines Journal Entry of Probation Revocation Hearing form as the official Commission form. The motion carried.

Outgrowth from Reentry Policy Council: Working to develop new in-house analysis capabilities – Mapping

Ms. Biggs announced that at the Reentry Policy Council meeting recently held in Wichita, we were approached by Representative Lloyd to see if the Sentencing Commission could do something similar to the Justice Mapping Center, which are maps of concentrations of offenders in Wichita. Since that time, research has been done, with three licenses being purchased for the needed software. Training has been researched, with plans to have future in-house capabilities for this type of work.

Johnson County Pilot Project

Marilyn Scafe was unable to attend today's meeting, so no update of the reconvened Johnson County Pilot Project subcommittee (dealing with the LSI-R) was made. It will stay on the agenda for the next Commission meeting.

Anticipate: Population Reduction Subcommittee

Ms. Biggs discussed the upcoming need for a Population Reduction subcommittee. She has ordered a book by Michael Jacobson (publication date 2/1/2005) *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration* in hopes this will be a starting point for the subcommittee.

Schedule Future Meetings

Chairman Johnson scheduled the following meeting dates to be used as needed:

July 6th, Wednesday, 1:30 p.m.

August 31st, Wednesday, 1:30 p.m.

October 5th, Wednesday, 1:30 p.m.

November 9, Wednesday, 1:30 p.m.

December 21, Wednesday, 1:30 p.m.

A motion was made by Kevin Graham and seconded by Roger Werholtz to adjourn the meeting. The motion carried, and the meeting was adjourned.